



Arnold Schwarzenegger, Governor
State of California
Business, Transportation and Housing Agency

Department of Managed Health Care

980 Ninth Street, Suite 500
Sacramento, CA 95814-2725
(916) 323-0435 -Phone
(916) 323-0438 -Fax
enforcement@dmhc.ca.gov

February 22, 2007

Jerry Fleming
Senior Vice President, National Health Plan Manager
Kaiser Foundation Health Plan, Inc.
2101 Webster Street, 8th Floor
Oakland, CA 94612

**RE: In the Matter of Kaiser Foundation Health Plan, Inc.
Enforcement Matter Number 05-221**

LETTER OF AGREEMENT

The Office of Enforcement of the Department of Managed Health Care (the Department or DMHC) has concluded its investigation of Kaiser Foundation Health Plan's (Kaiser) rescission of the Enrollee's individual membership with Kaiser. The Department has determined that Kaiser violated Health and Safety Code section 1389.3 by failing to conduct proper pre-enrollment medical underwriting and failing to establish that the Enrollee willfully misrepresented his health history before rescinding his health care coverage.

FACTUAL BACKGROUND

On October 8, 2003, the Enrollee applied for Kaiser Foundation Health Plan, Inc.'s Personal Advantage Plan. On his application, the Enrollee disclosed several pre-existing conditions, including kidney stones, within the last five years. Because of his disclosures, Kaiser denied his application on October 15, 2003.

On December 12, 2003, the Enrollee wrote to Kaiser requesting that Kaiser reconsider its denial of his initial application. In the letter, the Enrollee provided information from his health care providers regarding the pre-existing conditions disclosed in his initial application.

Following Kaiser's receipt of the Enrollee's request for reconsideration, a Kaiser employee re-entered his health history data into its computer system and omitted his kidney stone disclosure. Based on the erroneous health history entered by Kaiser's employee, Kaiser accepted the Enrollee on January 19, 2004, and his coverage became effective February 1, 2004.

On May 6, 2004, following a claim for a foot injury, Kaiser notified the Enrollee that his coverage was rescinded because he failed to disclose treatment for kidney stones. The May 6 letter informed the Enrollee that he had only ten days to appeal the rescission even though the Knox-Keene Act mandates that an Enrollee have thirty days to appeal a plan's adverse decision.

On June 18, 2004, Kaiser sent additional correspondence to the Enrollee alleging that Kaiser sent him the reconsideration application to complete, and that he intentionally omitted his kidney stone condition when he completed that application. In fact, the reconsideration application was never sent to the Enrollee. As noted above, it was a Kaiser employee, not the Enrollee, who omitted the kidney stone condition. The June 18th letter also failed to provide notice to the Enrollee of his right to contact the DMHC and file a grievance, and did not address the Enrollee's contention that he truthfully disclosed his medical conditions on his application. Moreover, the Enrollee made repeated requests for a copy of the reconsideration application, that he allegedly completed, but Kaiser failed to provide this information to him for seven months.

The Enrollee submitted two levels of appeals to Kaiser regarding his rescission: the first on May 19, 2004, and the second on August 19, 2004. The Plan denied both appeals and refused to reinstate his coverage. In July of 2004, Kaiser contacted the Enrollee to inform him that he was still eligible for a conversion plan, even though his coverage had been rescinded for alleged fraud. Kaiser mailed its conversion application to the Enrollee and he contacted Kaiser to discuss questions regarding the conversion application. During the call, a Kaiser representative informed him that he was not eligible for a conversion plan because he committed fraud against Kaiser, even though Kaiser had not met its burden of demonstrating that the Enrollee willfully misrepresented his health history to obtain coverage.

On February 1, 2005, after further investigation prompted by an inquiry from the Department of Managed Health Care's HMO Help Center, Kaiser reversed its decision and reinstated the Enrollee effective January 1, 2005. In its February 1 letter, Kaiser provided a very generic response to the Help Center and never admitted that its internal error led to the wrongful rescission of the Enrollee's coverage. Based on this information, the Help Center initially believed that the Enrollee's grievance was resolved and closed the case. However, on February 9, 2005, Kaiser sent a second letter to Paula Hood at the Help Center and finally admitted that a Kaiser employee had completed the reconsideration application for the Enrollee and omitted the

Enrollee's initial disclosure of kidney stones. As a result of this defect in the initial underwriting of the Enrollee's application, Kaiser wrongfully rescinded the Enrollee's coverage and alleged that he had defrauded Kaiser even though an internal error caused the wrongful rescission.

On April 25, 2005, the HMO Help Center re-opened the Enrollee's case and requested that Kaiser provide a chronology of events during its rescission investigation. Kaiser responded to the Help Center on May 10, 2005, and indicated that on January 21, 2005, Kaiser reversed its decision and reinstated the Enrollee effective January 1, 2005. However, Kaiser's chronology indicated that the Enrollee's disclosures were "[e]rroneously omitted when it was entered in the Plan's database system." The letter never mentioned the fact that a Kaiser employee completed the reconsideration application and omitted conditions that led to wrongful rescission of the Enrollee's coverage. As a result, the Enrollee was left without any insurance, and an allegation of fraud against him.

It took over seven months and repeated requests from the Help Center and the Enrollee before Kaiser admitted that its internal error led to wrongful rescission of the Enrollee's coverage. However, once Kaiser learned that an internal error led to the wrongful rescission, it took significant corrective action to verify that this was an isolated error and to avoid repeating the data entry errors that caused Kaiser employees to mistakenly believe that the Enrollee intentionally provided false information to obtain coverage. Kaiser modified its policies and procedures for data entry and rescissions, trained its employees and audited earlier rescission cases to determine whether any other Members had similar problems. Although the Department supports the corrective action taken by Kaiser, it has determined that Kaiser violated the following provisions of the Knox-Keene Act:

- Kaiser failed to resolve all reasonable questions arising from the information submitted on or with the application for enrollment in violation of Health and Safety Code section 1389.3. It was Kaiser's employee who omitted the kidney stone disclosure and it was this initial defect in Kaiser's underwriting process that led to wrongful rescission of the Enrollee's coverage.
- Failure to prove that the Enrollee willfully misrepresented his health history before rescinding coverage in violation of section 1389.3.

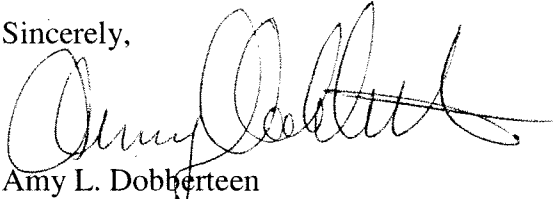
JERRY FLEMING

Letter of Agreement (05-221)

Page 4

In this case, Kaiser has acknowledged that its internal error resulted in a violation of section 1389.3 of the Health & Safety code. The Department has determined that an administrative penalty of \$225,000 is warranted in this matter and the Plan has agreed to pay the penalty. The Department agrees that execution of this Letter of Agreement and payment of the penalty will settle this enforcement matter and all issues, accusations and claims the Department has against the Plan based upon its actions in the above referenced case.


Sincerely,



Amy L. Dobberten
Assistant Deputy Director
Office of Enforcement

Accepted by Kaiser Foundation Health Plan, Inc.

Date: 3/1/07



Jerry Fleming
Senior Vice President
National Health Plan Manager

LC:slb